

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JANICE R. LAFFOON

Claimant

VS.

MILLENIUM MARKETING, INC.

Respondent

AND

TWIN CITY FIRE INS. CO., INC.

Insurance Carrier

Docket No. 1,024,523

ORDER

Claimant requests review of the November 28, 2005 preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

The Administrative Law Judge (ALJ) found that claimant failed to prove by a preponderance of the evidence that her upper extremity conditions arose out of and in the course of her employment with respondent. Claimant's request for medical treatment was denied.

Claimant contends the ALJ erred in finding that claimant failed to prove that her upper extremity injuries were work-related and in denying her request for medical treatment.

Respondent argues there was no evidence of a causal connection between claimant's work duties and her upper extremity injuries. Accordingly, respondent requests that the ALJ's Order be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent on January 6, 2004. She started as a telemarketer and in May or June 2004 was transferred to customer service. As a customer service representative, she wore a headset and when calls came in, she coded the calls into a computer. She estimated she spent 50 percent of her day keyboarding. In June 2005, she was referred to Dr. Gary Boston of the Headache & Pain Center by her personal care physician. Dr. Boston diagnosed her with bilateral carpal tunnel syndrome and performed carpal tunnel release surgery on the right wrist on June 16, 2005. She was returned to work without restrictions on July 18, 2005. On July 27, 2005, claimant was terminated from respondent for reasons not related to her problems with her hands.

Claimant did not claim a work-related accident or series of traumas to her hands until after her termination by respondent. The treatment and surgery on her right hand was paid for by her private health insurance. Claimant testified that the doctors at the Headache & Pain Center recommended she also have surgery on her left hand, but when her employment was terminated, she also lost her health insurance coverage so the surgery has not been done.

Claimant testified that a few days after she was terminated by respondent, she was talking to her sister, who is a paralegal, and her sister told her that the treatment for her hand condition should have been covered under workers compensation. Before that time, claimant was unaware that carpal tunnel syndrome could be claimed as a work-related injury. She testified that no one at respondent told her the injuries fell under workers compensation even though she asked about short-term disability when she had the surgery on her right wrist.

Jena Cavil, human resources director for respondent, testified that she visited with claimant in June 2005, before claimant had surgery on her right hand. Claimant told Ms. Cavil that a doctor had said she could claim her condition under workers compensation. Claimant, however, told Ms. Cavil that she knew her condition did not occur at work so she would not make a workers compensation claim. Claimant denies this conversation occurred.

Ms. Cavil also testified concerning the job duties of a customer service representative. She stated that they would handle from 50 to 75 calls a day and after each call, they would scroll down on a computer and code the call. Sometimes, the representative might have to type a sentence but not with every call. Ms. Cavil also testified that claimant never complained about doing the keyboarding or that it caused her any problems with her hands. However, she does recall seeing claimant wearing braces on her wrists before she left work for her surgery.

The ALJ found that claimant's job with respondent was not very hand-intensive and was not a job that would likely cause carpal tunnel syndrome. He further noted that there was nothing in the medical records relating claimant's carpal tunnel syndrome to her work. The ALJ suggested that claimant's motive for filing a workers compensation claim may

have been retaliation for her termination. Accordingly, the ALJ found that claimant failed to prove by a preponderance of the evidence that her upper extremity conditions arose out of and in the course of her employment with respondent.

The Board agrees that in the absence of a medical expert's opinion relating claimant's condition to her work activities with respondent, the record submitted to date fails to meet claimant's burden of proof. The mere mention in the medical records that claimant does keyboarding on a computer at work is not, as claimant's counsel suggests, the equivalent of a causation opinion, nor are they statements "from which it can be reasonably inferred that the conditions were attributable to claimant's work activities."¹ Furthermore, a credible causation opinion requires an accurate history. In this case, there is a dispute between the witnesses concerning how much keyboarding claimant's job required. There is no indication in the medical records that are in evidence as to how much keyboarding those physicians believed claimant was performing at work. As such, the ALJ's Order denying preliminary benefits should be affirmed.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Kenneth J. Hursh dated November 28, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2006.

BOARD MEMBER

c: Christopher R. Smith, Attorney for Claimant
Patricia A. Wohlford, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ Claimant's Brief at 3 (filed Jan. 9, 2006).